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SANTA FE, NEW MEXICO 87501

Joint Powers Agreement No. 2016-0223-PW/BT
Between Santa Fe County and the Greater Glorieta
Community Regional Mutual Domestic Water Consumers
and Sewage Works Association

**JOINT POWERS AGREEMENT
BETWEEN SANTA FE COUNTY
AND
THE GREATER GLORIETA COMMUNITY REGIONAL
MUTUAL DOMESTIC WATER CONSUMERS AND
SEWAGE WORKS ASSOCIATION
CONCERNING IMPROVEMENTS TO THE ASSOCIATION'S
WATER UTILITY SYSTEM**

Pursuant to the New Mexico Joint Powers Agreements Act, NMSA 1978, Chapter 11, Article 1, this Joint Powers Agreement ("Agreement") is made and entered into as of the day it is approved by the Secretary of Finance and Administration by and between the Board of County Commissioners of Santa Fe County, New Mexico (hereinafter referred to as the "County"), a political subdivision of the State of New Mexico, and the Greater Glorieta Community Regional Mutual Domestic Water Consumers and Sewage Works Association (hereinafter referred to as the "Association"), a political subdivision of the State of New Mexico organized under the Sanitary Projects Act, NMSA 1978, §§ 3-29-1 through 3-29-21.

RECITALS

WHEREAS, the Association was incorporated as a domestic nonprofit in 2010 and commenced active water utility operations in 2012 by the merger of three former mutual domestics: Glorieta Estates Mutual Domestic Water Consumers Association, Glorieta Water Users Association, and East Glorieta Mutual Domestic Water Consumers Association. The three mutual domestics merged into the Association; and

WHEREAS, the purpose of the Association is to improve the public health of the residents of the community of Glorieta and the greater Glorieta region through the acquisition, construction and improvement of water supply reuse, storm drainage and wastewater facilities; and

WHEREAS, in 2012, the Association secured \$368,282.00 in funds from the Water Trust Board ("WTB Funds") for improvements to the infrastructure of the Association's water system. Also in 2012, the County, on behalf of the Association, applied for and received a Community Development Block Grant ("CDBG") from the State of New Mexico in the amount of \$424,759.00 to assist the Association with the completion of improvements to the Association's water utility system; and

WHEREAS, the County and the Association entered into a Joint Powers Agreement, dated April 11, 2013 ("2013 JPA"), wherein the County and Association agreed to expend the WTB Funds and CDBG funds to complete construction of improvements to the Association's water utility system. Through a Limited Assignment of Contract, attached to the 2013 JPA as

Exhibit A (“Limited Assignment”), the Association assigned, with exceptions, its engineering contract with engineer HDR Engineering, Inc. to the County; and

WHEREAS, the 2013 JPA does not appear to have ever been signed by the Secretary of Finance and Administration, although it was signed by an employee of the Local Government Division (LGD) of the New Mexico Department of Finance and Administration; and

WHEREAS, in 2014, a Certificate of Substantial Completion was issued for the improvements that were the subject of the 2013 JPA, and the WTB Funds and CDBG funds were expended on design engineering and construction costs in conformity with the terms and conditions of these funding sources; and

WHEREAS, it is necessary for the parties to enter into this Agreement that will supersede the 2013 JPA to provide for the duties and responsibilities of the County and the Association for the ownership, operation and maintenance of the water system improvements; and

WHEREAS, the County and the Association are authorized by law to enter into this Agreement, and the common power to be exercised is to own, operate and maintain a public water utility system, pursuant to the Sanitary Projects Act and NMSA, § 4-36-10(A), § 4-37-1, and Chapter 3, Article 26 and Article 7.

AGREEMENT

NOW THEREFORE, the County and the Association mutually agree as follows:

Article 1

General Purpose of Agreement

1.1. This Agreement is intended to and does replace and supersede the 2013 JPA and re-assign to the Association the rights and duties under the contract with HDR Engineering, Inc., as described in the Limited Assignment of the 2013 JPA . The purpose of this Agreement is to state the agreement and understanding of the parties for the ownership and responsibilities for operation and maintenance of the improved water utility system that serves the Village of Glorieta and the greater Glorieta region. The improvements completed pursuant to the 2013 JPA and whose operation and maintenance are provided for in this Agreement are collectively referred to as the “Improvements.” The Improvements are generally described as follows:

1. Approximately 4,300 lineal feet of new 8” waterline, fittings and joint restraints;
2. Gate valves;
3. Fire hydrants;
4. Connections to the pre-existing waterline system;

5. 103 service connections including water meters and meter boxes equipped for remote meter reading;
6. Automated/remote water meter reading hardware and software.

Construction was completed along Avenida Ponderosa in the unincorporated community of Glorieta to connect the portion of the Association's water utility system serving Glorieta Estates to the portion of the Association's water utility system serving the central portion of the unincorporated community of Glorieta. The Improvements were constructed and installed in accordance with the engineering design prepared by HDR Engineering, Inc.

The Improvements and other work undertaken by the Association with WTB Funds resulted in improved water service for 103 households within the Association's service area; improved water quality for the Association's entire water utility system; improved water quality with the replacement of radium contaminated well; installation of three new fire hydrants and improved fire protection capacity; improved service connections and documentation of service connection locations; and enhanced metering capability for the Association's water utility system.

Article 2

Ownership and Maintenance of the Improvements; Re-Assignment

The County and Association agree that the Improvements and purposes that were the subject of the 2013 JPA and the Limited Assignment are complete. The purposes of this Agreement are to provide for the ownership, operation and maintenance of the Improvements as between the parties, and to re-assign to the Association all the rights, duties and obligations that were assigned to the County in the Limited Assignment.

2.1 The Improvements shall be owned jointly by the Association and the County. The ownership interest of each party shall be determined by the amount of each party's financial contributions to the total cost of design and construction of the Improvements and associated components. Contributions to the total cost shall include engineering/design, construction and materials costs. The County's contribution and ownership interest in the Improvements shall be 50.7% and the Association's ownership interest shall be 49.3%.

2.2 The Association and County agree, and HDR Engineering, Inc. concurs, that all the rights, duties and obligations assigned to the County in the Limited Assignment are released by the County and fully assumed by the Association, including, but not limited to, the provisions inserted as Articles 22 (MACC for CDBG funded projects) and Article 23 (Federal Terms and Conditions for Professional Services for CDBG funded projects).

Article 3
Obligations and Duties of the Parties

3.1 The County agrees to:

- (1) Timely provide to the Association necessary information and documentation held by the County that would assist the Association in any audit requirement imposed on the expenditure or disbursement of the CDBG funds.
- (2) Maintain for a period of six years from the date of close-out of Grant Agreement CDBG No. 12-C-NR-I-01-G-46, all records connected with the construction of the Improvements.
- (3) Continue to maintain all rights and duties as the owner of an undivided interest in the Improvements, including rights and duties as a beneficiary of any guarantees or warranties regarding design, materials or workmanship that may arise out of construction contract No. 2014-0175-PW/MS between the County and Done Right Construction, the contractor who constructed the Improvements.
- (4) Maintain the license granted to the County by Burlington Northern Santa Fe (BNSF) railroad dated October 12, 2012, BNSF Tracking # 11-42615.
- (5) If applicable, grant easement(s) to the Association for the operation and maintenance of the Improvements, subject to approval of LGD or the State Board of Finance, to the extent required under NMSA 1978, § 13-6-2(D) and 13-6-2.1.

3.2 The Association agrees to:

- (1) Obtain easement(s) from the County for real property owned by the County that contain Improvements, if such easement(s) are required by the County and required for the Association's operation and maintenance of the Improvements.
- (2) Timely provide to the County all necessary information and documentation held by the Association that would assist the County in any audit requirement imposed on the expenditure or disbursement of the CDBG funds, including any records required to be maintained by the engineer under the Association's contract with HDR Engineering, Inc., paragraph 10 (a), (d), (e) and (f) (Audits and Access to Records).
- (3) Maintain for a period of six years from the date of close-out of Grant Agreement CDBG No. 12-C-NR-I-01-G-46, all records connected with the construction of the Improvements.
- (4) Cooperate with the County by providing documentation and information necessary for the County's submission of documentation and information for close out of the CDBG funds.
- (5) Maintain the license granted to the Association by Burlington Northern Santa Fe (BNSF) railroad dated June 12, 2013, BNSF Tracking # 11-426299.
- (6) Be fully responsible for the day-to-day operation and maintenance of the Association's water utility system, including the Improvements and associated components. The Association shall be solely responsible for all costs and expense of operation and maintenance of the water utility system, including the cost of any necessary capital improvements. The County will not be

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responsible for any cost or expense of operation and maintenance of the Association's water utility system, including the Improvements and associated components, and the County will have no responsibility to contribute to such costs or expense.

(7) Be responsible for maintenance and testing of the fire hydrants.

Article 4
Term and Termination

4.1 This Agreement shall be in full force and effect upon the execution of this Agreement by all of the parties and approval by the New Mexico Secretary of Finance and Administration, and shall continue in full force and effect until terminated as provided herein.

4.2 Except as provided in Section 5.3, either party may terminate the Agreement for cause (i.e., any breach violation of this Agreement's material terms). It shall terminate automatically upon the conveyance of the County's interest in the Improvements to the Association.

Article 5
Disposition of Property; Return of Surplus Funds

5.1 Upon expiration or termination of this Agreement, if either party has property or funds in its possession belonging to the other, the property and the funds shall be returned to each party and, if less than the original amount of property or funds contributed remains, then returns shall be in proportion to the parties' original contribution.

5.2 Upon expiration or termination of this Agreement by the parties, the powers granted under this Agreement shall continue to the extent necessary to make an effective disposition of the Improvements, other property, and funds and render a full accounting.

5.3 In order for the County to convey its interest in the Improvements to the Association for continued use by the Association in providing water service within its service areas, the County shall request permission from LGD and other governmental authorities, as may otherwise be required by law, no sooner than five years after the date of the letter issued by LGD documenting closeout of the County's CDBG grant. The parties agree to cooperate in securing such approvals and to execute and deliver all documents necessary to effectuate such conveyance.

Article 6
Appropriations

6.1 The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Association and the County, as appropriate. If sufficient appropriations or authorizations are not made, a party may terminate this Agreement, or suspend performance pending approval of sufficient appropriations or authorizations, upon written notice

from one to the other, regardless of any other provisions in this Agreement. A party's decision as to whether sufficient appropriations are available shall be final, binding and accepted by the other party.

Article 7 Insurance

7.1 The parties, each at its own expense, shall carry public liability insurance coverage consistent with the responsibilities of each entity under the New Mexico Tort Claims Act, NMSA 1978, §41-4-1, as amended.

7.2 The Association shall, at its sole cost and expense, obtain and continuously maintain property insurance insuring the Improvements and its entire water utility system against loss.

7.2 The insurance required by this Agreement shall be from a reliable insurance company and such policy shall be maintained in full force and effect throughout the duration of this Agreement. A copy of any insurance policy shall be provided to the other party at a party's request.

Article 8 Records and Audits, Strict Accountability

8.1 Both parties shall be strictly accountable for receipts and disbursements relating hereto, shall make all relevant financial records available to each other, the New Mexico Department of Finance and Administration, New Mexico Finance Authority, and the State Auditor upon request, and shall maintain all such records for three years after this Agreement has expired or has been terminated.

Article 9 Liability

9.1 No party hereto shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement shall be subject to the privileges and immunities of the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, as amended.

Article 10 Third Party Beneficiary

10.1 The parties to this Agreement do not and do not intend to create in the public, any member thereof, or any person any right whatsoever, including, but not limited to, the rights of a third-

party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for any claim whatsoever related to this Agreement or to enforce the terms hereof.

Article 11
Dispute Resolution

11.1 Disputes shall be first discussed by representatives of each party having the authority, if necessary, to bind the party that they represent. Such representatives shall use their best efforts to amicably and promptly resolve the dispute. If the parties are unable to resolve the dispute through informal mechanisms or mediation within 30 days of the occurrence of the event or circumstances giving rise to the dispute, then either party may seek redress of their respective issues in the New Mexico State District Court, First Judicial District.

Article 12
Governing Law

12.1 The substantive laws of the State of New Mexico shall govern this Agreement.

12.2 The parties stipulate and agree that funding for this project and completion of the Improvements was sought prior to the adoption of Santa Fe County Resolution 2012-58 and that County Resolutions 2012-58 does not pertain to this project or completion of the Improvements.

Article 13
Notice

13.1 Any notice or demand authorized or related to this Agreement may be mailed (return receipt requested), hand delivered or faxed, addressed as follows:

To County: County Manager
Santa Fe County
102 Grant Avenue
P.O. Box 276
Santa Fe, NM 87504-0276

With Copy to: Paul Olafson
Community Projects Division
Santa Fe County
P.O. Box 276
Santa Fe, NM 87504-0276

To the Association: Anna Hamilton, President
Greater Glorieta Community Regional Mutual

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Domestic Water Consumers and Sewage Works
Association
P.O. Box 223
Glorieta, NM 87535

Notice shall be deemed to have been given based upon the method of delivery, as follows: notices sent by facsimile or hand delivered shall be deemed given on the date of delivery, as evidenced, with respect to facsimile delivery, by a printout showing successful transmission of all pages included in the notice; notices sent by mail shall be deemed given three business days after the notice is mailed with postage prepaid.

B. A party may change the persons to whom or addresses at which notice shall be given by giving all other parties notice of the change in accordance with this Article.

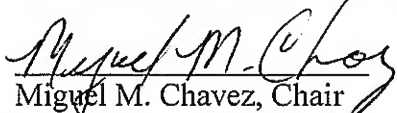
Article 14
Amendment

14.1 This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and approved by the Secretary of Finance and Administration.

Article 15
Entire Agreement

15.1 This Agreement contains the entire agreement between the parties hereto with regard to the matters set forth herein. This Agreement replaces and supersedes the 2013 JPA.

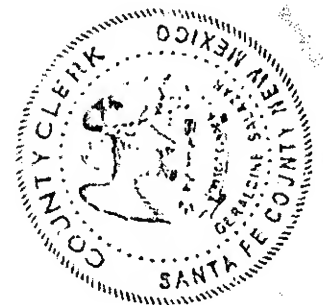
BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY


Miguel M. Chavez, Chair
Santa Fe Board of County Commissioners

ATTESTATION:

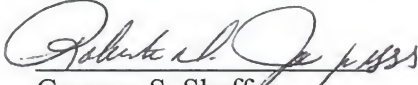

Geraldine Salazar
Santa Fe County Clerk

1-12-2016



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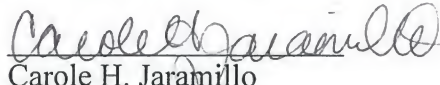
Approved as to form



Gregory S. Shaffer
Santa Fe County Attorney

Date 1-12-16

Finance Department



Carole H. Jaramillo
Finance Director

Date 1/12/16

Concurrence:

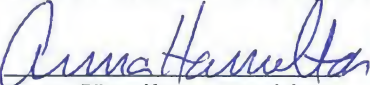
HDR Engineering, Inc.



~~Peter Brakenhoff, VP~~
DAVID SKINNER, VP

Date 1/14/16

**GREATER GLORIETA COMMUNITY REGIONAL MUTUAL DOMESTIC WATER
CONSUMERS AND SEWAGE WORKS ASSOCIATION**



Anna Hamilton, President

Date 1/13/16

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION



Thomas E. Clifford
Secretary

Date 1-22-16